

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT CHRISTOPHER JIMENEZ,

No. C 09-2328 SI (pr)

Plaintiff,

**ORDER RE. PLEADINGS,
DISCOVERY AND SCHEDULING**

v.

MEDICAL HEALTH SERVICES; et al.,

Defendants.

This action is now before the court for consideration of plaintiff's request to file a second amended complaint and plaintiff's discovery motion, as well as to set a new schedule for dispositive motions.

A. Request To File Second Amended Complaint

Robert Christopher Jimenez filed this pro se prisoner's civil rights action under 42 U.S.C. § 1983. The court reviewed his complaint and ordered Jimenez to file an amended complaint that cured several deficiencies the court identified. He then filed an amended complaint, which the court reviewed under 28 U.S.C. § 1915A. The court found that, liberally construed, the amended complaint stated a cognizable Eighth Amendment claim against three defendants and ordered service of process on them. He now wants to file a second amended complaint. To analyze the request, it is necessary to consider the amended complaint also.

The amended complaint described Jimenez's history of hepatitis C and the response of medical staff members at several other prisons, including Pelican Bay. The court dismissed the claims regarding treatment at prisons other than Pelican Bay as improperly joined. See Order

1 Of Service, p. 3. With regard to the claims about medical care at Pelican Bay, the court
2 described the amended complaint's allegations:

3 Jimenez then was transferred to Pelican Bay State Prison on June 10, 2008, where he
4 received some hepatitis C treatment for about a month until mid July 2008. On July 15,
5 2008 his hepatitis C treatment was discontinued by Dr. Linda Rowe. On September 23,
6 2008, Jimenez's CDC-602 inmate appeal was denied. Dr. Rowe said that Jimenez was
7 a non-responder, and chief medical officer Sayre and family nurse practitioner
Risenhoover agreed. The amended complaint is far from clear on this point, but it
appears that Rowe, Sayre and Risenhoover decided to stop treatment as a committee.
See Amended Complaint, p. 3. Jimenez filed another inmate appeal, and his AVT
treatment started again on April 17, 2009.

8 Order of Service, p. 2. The court determined that "[l]iberally construed, the amended complaint
9 states a cognizable § 1983 claim against defendants Rowe, Sayre, and Risenhoover for deliberate
10 indifference to Jimenez's medical needs when they allegedly stopped the treatment for Jimenez's
11 hepatitis C in mid-2008." Order of Service, p. 3. Those three defendants were served with
12 process and have appeared in this action.

13 Jimenez now requests leave to file a *second* amended complaint. Defendants have not
14 opposed the filing of the second amended complaint but ask the court to screen it under 28
15 U.S.C. § 1915A. Jimenez thinks his second amended complaint "is need[ed] to properly show
16 the courts the merits of his complaint in claim with full depth and exhibits that show the
17 beginning and end of both." Request To Amend/Second Amended Complaint (Docket # 15),
18 p. 2.

19 "The court should freely give leave [to amend] when justice so requires." Fed. R. Civ.
20 P. 15(a)(2). Leave to amend need not be granted, however, where the amendment of the
21 complaint would cause the opposing party undue prejudice, is sought in bad faith, constitutes
22 an exercise in futility, or creates undue delay. See Janicki Logging Co. v. Mateer, 42 F.3d 561,
23 566 (9th Cir. 1994); Roberts v. Arizona Bd. of Regents, 661 F.2d 796, 798 (9th Cir. 1981).

24 There are two basic problems with Jimenez's second amended complaint. First, it re-
25 introduces some of the deficiencies that were in the original complaint that were cured in the
26 court-ordered amended complaint. For example, the original complaint was deficient "in that
27 it provides an extremely limited description of Jimenez's problem and essentially calls on the
28 reader to piece together a claim by reading through the exhibits." Order Of Dismissal With

1 Leave To Amend, p. 2. Jimenez's amended complaint reduced the number of references to
 2 exhibits, but the second amended complaint revives the problem. Jimenez's explanation of his
 3 medical care claim in the amended complaint was somewhat understandable, but the second
 4 amended complaint appears to be less so. Second, the second amended complaint appears to be
 5 legally unnecessary. The court already found that a cognizable claim for deliberate indifference
 6 was pled. Jimenez wants to show the merits of his claim and explain his story in greater detail
 7 in his second amended complaint, but that is not necessary. A pleading does not need to provide
 8 a detailed time line or a detailed narrative of the inmate's medical care, but only needs to provide
 9 enough information for the court to determine that it states a claim for deliberate indifference
 10 to a serious medical need. The amended complaint sufficed to do that. Continued tinkering with
 11 a pleading after the court has found that a claim has been stated may result in a plaintiff un-
 12 stating a claim if a later version deletes some critical allegation because of the rule that a later
 13 pleading supersedes an earlier pleading.¹ Resolution of a case is delayed by repeated
 14 amendments of the pleading. For the foregoing reasons, the interests of justice do not support
 15 allowing the second amended complaint. Defendants' request to screen the second amended
 16 complaint is GRANTED (docket # 17) and plaintiff's request to file the second amended
 17 complaint is DENIED (docket # 12 and # 15). The operative pleading is the amended complaint
 18 filed on November 5, 2009 (docket # 6).

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 20 B. Discovery Request

21 Jimenez's "motion - discovery request" is DISMISSED because it was improperly filed.
 22 (Docket # 11.) The court generally is not involved in the discovery process and only becomes
 23 involved when there is a dispute between the parties about discovery responses. Discovery
 24 requests and responses normally are exchanged between the parties without any copy sent to the
 25 court. See Fed. R. Civ. P. 5(d) (listing discovery requests and responses that "must not" be filed
 26 with the court until they are used in the proceeding or the court orders otherwise). Only when
 27

28 ¹Here, for example, Jimenez neglected to attach to his second amended complaint the exhibit 22
 he refers to in the text in the second amended complaint.

1 the parties have a discovery dispute that they cannot resolve among themselves should the
 2 parties even consider asking the court to intervene in the discovery process. The court does not
 3 have enough time or resources to oversee all discovery, and therefore requires that the parties
 4 present to it only their very specific disagreements. To promote the goal of addressing only very
 5 specific disagreements (rather than becoming an overseer of all discovery), the court requires
 6 that the parties meet and confer to try to resolve their disagreements before seeking court
 7 intervention. See Fed. R. Civ. P. 37(a); N. D. Cal. Local Rule 37. Where, as here, one of the
 8 parties is a prisoner, the court does not require in-person meetings and instead allows the
 9 prisoner and defense counsel to meet and confer by telephone or exchange of letters. Although
 10 the format of the meet-and-confer process changes, the substance of the rule remains the same:
 11 the parties must engage in a good faith effort to meet and confer before seeking court
 12 intervention in any discovery dispute.

13 The dismissal of the discovery motion does not mean that Jimenez cannot do discovery.
 14 To the contrary, he is free to serve his discovery requests on defendants by mailing his requests
 15 to their attorney. The court notes that Jimenez has listed a written deposition as part of his
 16 discovery request.² If he wants to conduct a deposition on written questions, he needs to set up

18 ²The deposition upon written questions procedure may sound like an inexpensive way for
 19 a prisoner to do discovery but usually is not. A deposition upon written questions is covered by
 20 Rule 31 of the Federal Rules of Civil Procedure. The deposition upon written questions basically
 21 would work as follows. The prisoner would send out a notice of deposition that identifies (a)
 22 the deponent (i.e., the witness), (b) the officer taking the deposition, (c) a list of the exact
 23 questions to be asked of the witness, and (d) the date and time for the deposition to occur. The
 24 defendants would have time to send to the prisoner written cross-examination questions for the
 25 witness, the prisoner would then have time to send to defendants written re-direct questions for
 26 the witness, and the defendants would have time to send to the prisoner written re-cross-
 examination questions for the witness. When all the questions --without any answers-- are
 ready, the prisoner would send them to the deposition officer and the officer would take the
 deposition of the witness. The questions are read by the deposition officer, the responses are
 reported by a court reporter and the transcript is prepared as it would be for an oral deposition.
 The deposition officer does not stray from the written script of questions and asks only those
 questions that are on the list from the prisoner and defendants. To depose a non-party on written
 questions, that witness must be subpoenaed.

27 To obtain a deposition upon written questions, the prisoner thus has to pay the witness
 28 fee, deposition officer fee, court reporter fee, and the cost of a transcript of the proceedings. The
 procedure is not much cheaper than an oral deposition unless there are substantial travel
 expenses that would be incurred to bring the witness to the prisoner or the prisoner to the
 witness. In addition to the cost, the evidence-gathering ability in such a deposition is quite

1 such a deposition, arrange for a court reporter and pay the costs associated with such a
2 deposition. It is not defendants' obligation or the court's obligation to do so.

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4 C. Scheduling

5 Having determined that the amended complaint remains the operative pleading from
6 plaintiff, the court now sets the following new briefing schedule for dispositive motions:

7 1. Defendants must file and serve their dispositive motion no later than

8 **December 10, 2010.**

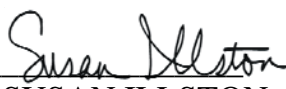
9 2. Plaintiff must file and serve on defense counsel his opposition to the dispositive
10 motion no later than **January 14, 2011.**

11 3. Defendants must file and serve their reply brief (if any) no later than **January 28,**
12 **2011.**

13 Plaintiff's filings – with his small handwriting written with up to 60 lines of text per page
14 – are unduly difficult to read. All future filings must have no more than 40 lines of text per page
15 if the documents are handwritten (and 28 lines of text per page if the documents are double-
16 spaced).

17 IT IS SO ORDERED.

18 Dated: November 1, 2010

19 
20 SUSAN ILLSTON
21 United States District Judge
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27 limited. The requirement that the questions all be written and shared in advance means that there
28 is no opportunity for follow-up questions when a witness makes a statement that is unexpected.
Finally, poorly worded questions will often result in useless answers.